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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1971
No. 71-951

ALMOTA FARMERS ELEVATOR AND WAREHOUSE COMPANY

Petitioner,

vs.

UNITED STATES,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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Petition for Certiorari
Filed January 24, 1972
Certiorari Granted April 3, 1972

APPENDIX

RELEVANT DOCKET ENTRIES
(U.S. District Court)

1. May 26, 1967 Filed Complaint
2. May 26, 1967 Filed Declaration of Taking
3. May 29, 1967 Entered Order for Possession (filed 5/29/67)
4. July 3, 1967 Filed Notice of Appearance (Almota Farmers)

5. Oct. 14, 1968 Filed Defendant's Motion for Determination of the Law of the Case on Valuation of Building Improvements - Parcel "A"

6. Nov. 6, 1968 Filed Copy Reporter's Transcript - Oral Decision of the Court - Parcel "A"

7. Nov. 22, 1968 Entered Order Granting Defendant's Motion for Determination of Law - Parcel "A" (Defendant Almota Farmers entitled to full market value of its leasehold and building improvements as of date of taking)

8. March 5, 1969 Pretrial Conference

9. March 7, 1969 Entered Pre-Trial Order as to Parcel "A"

10. March 21, 1969 Record non jury trial - Court's determination: Judgment for defendant Almota Farmers Elevator and Warehouse Company

11. March 21, 1969 Filed Stipulation as to Parcel "A"

12. April 9, 1969 Entered Findings of Fact and Conclusions of Law as to Parcel "A"

13. April 9, 1969 Entered Judgment and Deficiency as to Parcel "A"

14. May 29, 1969 Filed (Plaintiff) Notice of Appeal as to Parcel "A"

15. July 7, 1969 Filed (Plaintiff) Motion to Extend Time for Designation and Filing Record and Docketing Appeal as to Parcel "A"

16. July 8, 1969 Entered Order Extending Time to Docket Record on Appeal (to 8/27/69)

17. July 18, 1969 Filed Copy Reporter's Transcript - Record of Proceedings at Trial

18. Aug. 19, 1969 Filed Copy Reporter's Transcript - Record of Proceedings on Motions

19. Aug. 20, 1969 Filed Stipulation for Designation of the Record on Appeal as to Parcel "A"

20. Aug. 22, 1969 Forwarded Record on Appeal to 9CCA

(Circuit Court)

21. Sept. 23, 1970 Filed opinion Reverse the Judgment and remand the case to the District Court with a direction to enter a judgment in favor of the condemnee, Almota Farmers Elevator and Warehouse Co. for $130,000.00, each party to bear its own costs.

22. Sept. 23, 1970 Filed and Entered Judgment

23. Oct. 12, 1970 Filed Original and 25 copies Appellee's Petition for Rehearing and Suggestion for rehearing en banc

24. Dec. 9, 1970 Filed Order (Md K Cy) Denying Petition for Rehearing

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs.	CIVIL NO. 3021
22.95 ACRES OF LAND, more or less situate in Whitman County, State of Washington; ALMOTA FARMERS ELEVATOR AND WAREHOUSE COMPANY, a Washington Corporation; (names of other defendants omitted in printing) Defendants.	DEFENDENT'S MOTION FOR DETERMINATION OF THE LAW OF THE CASE ON VALUATION OF BUILDING IMPROVEMENTS

[Filed in the U. S. District Court, Eastern District of Washington, Oct. 14, 1968, Dorothy E. Moulton, Clerk, L.R. Deputy]

The Defendant hereby moves the Court as follows:

For an order determining that in the above entitled case the defendant, Almota Farmers Elevator and Warehouse Company, Incorporated, is entitled to be compensated for the full market value of its leasehold and its building improvements thereon as a unit as of the date of taking including both of the following:

The market value of the leasehold

exclusive of the building improvements being the difference between the value of the use and occupancy of the leasehold for the remainder of the term less the agreed rent to be paid.

Plus the market value of the building improvements in place upon the leased premises for use thereon without being limited to the value of their use for the remainder of the term.

This motion is made upon the grounds that a determination of the law to be applied in the valuation of the leasehold improvements must, in any event, be made in the trial of the case; that negotiations for possible settlement of the issue of valuation without trial are not possible without said determination; and that a forthwith determination of the applicable law will expedite the possibility of an agreed settlement.

This motion is based upon the records and files of the case and the attached affidavit of Lawrence Hickman, one of the attorneys for said defendant, and it is supported by the attached brief.

DATED this 11th day of October, 1968.

/s/ Lawrence Hickman
Lawrence Hickman of Attorneys
for said defendant

(Address and acknowledgment of service omitted in printing)

AFFIDAVIT IN SUPPORT OF MOTION
(Title omitted in printing)

STATE OF WASHINGTON)
) ss.
COUNTY OF WHITMAN)

Lawrence Hickman, being first duly sworn upon oath, deposes and says:

That he is one of the attorneys for the defendant, Almota Farmers Elevator and Warehouse Company, Incorporated; and that he is also business manager of the said company.

Said company owns an interest in Parcel "A" being condemned in the above entitled action as a lessee from the Oregon-Washington Railroad and Navigation Company, Union Pacific Railroad Company, and Camas Prairie Railroad Company for the storage and handling of grain at a current rent of $114.20 per year. The property has been occupied without interruption under various railroad leases since about 1919. The last day of the term of the present lease is

October 12, 1974.

The company has constructed elevator and warehouse improvements upon the leased premises of a present license capacity of 586,400 bushels of which 526,400 bushels is in upright storage. The lease provides that none of the building improvements to be constructed by the lessee shall become a part of the real estate. Those improvements are now the property of the company and the company has the right to and is obligated to remove them within six months after the termination of the lease. The lease contains no provision for a termination of the lease in the event of condemnation.

Insofar as the valuation of the property condemned is concerned the company has at all times contended that it is entitled to compensation equal to the market value on the date of taking both as to its leasehold interest and as to its building improvements the total being the equivalent of what the lease and improvements together would have sold for upon the market. Affiant has been informed by an attorney for plaintiff that it is plaintiff's contention that the only

DATED this 11th day of October, 1968.

/s/ Lawrence Hickman
Lawrence Hickman of Attorneys
for said defendant

(Address and acknowledgment of service omitted in printing)

AFFIDAVIT IN SUPPORT OF MOTION
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STATE OF WASHINGTON)
) ss.
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Insofar as the valuation of the property condemned is concerned the company has at all times contended that it is entitled to compensation equal to the market value on the date of taking both as to its leasehold interest and as to its building improvements the total being the equivalent of what the lease and improvements together would have sold for upon the market. Affiant has been informed by an attorney for plaintiff that it is plaintiff's contention that the only

compensation the company is entitled to is the market value of the leasehold including only the use value of the building improvements for the remainder of the term in reliance upon the case of United States vs. Petty, 327 U.S. 372. That affiant is informed and believes that the value as determined according to the contention of the plaintiff is far less than one half the value determined in accordance with the contentions of the defendant; and that it is not possible without a determination of the law applicable to the valuation of the leasehold improvements to enter into any negotiation towards settlement of the issue of valuation nor can any trial of that issue be concluded without a like determination.

/s/ Lawrence Hickman

SUBSCRIBED AND SWORN to before me this 14th day of October, 1968.

/s/ Philip H. Faris
NOTARY PUBLIC in and for the State of Washington, Residing at Colfax.

PRE-TRIAL ORDER AS TO PARCEL "A"
(Title omitted in printing)

[Filed in the U.S. District Court, Eastern District of Washington, Mar. 7, 1969, Dorothy E. Moulton, Clerk, L.R.,Deputy]

A pre-trial conference was held in the above-entitled proceedings as to Parcel "A" on March 5, 1969 at Spokane, Washington. Judge Charles L. Powell presided. The parties were represented as follows: Plaintiff United States of America by John H. McRae, Assistant United States Attorney, and defendant Almota Farmers Elevator and Warehouse Company, a corporation, by Lawrence Hickman, Attorney at Law. As a result, this pre-trial order has been formulated as follows:

NATURE OF PROCEEDINGS

This is a civil action commenced by plaintiff United States of America under power of eminent domain to acquire title to the lands and interest designated as Parcel "A" and to provide for the ascertainment of award and just compensation to the owners and parties in interest.

ADMITTED FACTS

The following facts have been agreed upon by the parties and require no proof:

1. This is an action to acquire title on behalf of the United States of America to an

interest in certain real property, and jurisdiction of this proceeding is vested in this Court under 28 USC 1358.

2. The United States of America commenced this action on May 26, 1967 by filing a Complaint in Condemnation and a Declaration of Taking and describing in said Complaint and said Declaration of Taking the lands and interest designated as Parcel "A".

3. The acquisition by the United States of America under power of eminent domain of the lands and interest designated as Parcel "A" was acquired as a public use and was authorized under the statutes set forth in the Complaint and Declaration of Taking filed herein.

4. The lands and interest designated as Parcel "A" were acquired by the United States of America for a public use in connection with the construction of the Little Goose Lock and Dam Project of the Corps of Army Engineers on the Snake River. The Little Goose Lock and Dam project is a project authorized by Congress for the construction of river improvement for purposes of navigation and other uses incident hereto, and the Snake River is a navigable river.

5. The parcel of land designated as

Parcel "A" consists of 0.75 of an acre located at Almota, in Whitman County, Washington. The fee title to said lands immediately prior to the filing of the Declaration of Taking was in the Oregon-Washington Railroad and Navigation Company, and the defendant Almota Farmers Elevator and Warehouse Company held a leasehold interest in the said lands and in the improvements situated thereon.

6. The United States has acquired in this proceeding all right, title and interest of the defendant Almota Farmers Elevator and Warehouse Company in and to the land described as Parcel "A", subject, however, to existing easements for public roads and highways, public utilities, roads and pipelines. The only known easement is the right of the Inland Power and Light Company, a corporation, to maintain an overhead power line and related facilities across said premises.

7. The date of taking in this proceeding is May 26, 1967, and the compensation to be paid for the taking of such lands and interest is computed as of said date, that is, May 26, 1967, in accordance with the condition the improvements therein were then in.

8. The interest of the defendant Almota Farmers Elevator and Warehouse Company in the land described as Parcel "A" and to the

improvements situated thereon is the interest set forth in that certain lease by and between defendant, as lessee, and the Oregon-Washington Railroad and Navigation Company, as lessor, copy of which is identified as Plaintiff's Exhibit No. 1 and which provides in pertinent part as follows:

(a) The lease term is a period of twenty years commencing October 13, 1954, and expiring October 12, 1974;

(b) The property is leased for the purpose of receipt, shipping, storage and handling of grain;

(c) The lessee may remove its buildings and improvements at the expiration of the lease, but if the lessee does not do so, they are to become the property of the lessor, who may remove them at lessee's expense.

(d) The lease contains no option for renewal.

9. On the date of taking, the improvements on Parcel "A" consisted of a grain elevator, including machinery and equipment for the storage and handling of grain. Among the facilities were the following:

(a) Head house elevator of wood crib construction with a capacity of 126,485 bu. divided into 18 bins;

(b) East Annex elevator of wood crib construction with a capacity of 125,290 bu. divided into 12 bins;

(c) West Annex elevator of wood crib construction with a capacity of 122,265

bu. divided into 12 bins;

(d) Concrete tank elevator with a capacity of 148,460 bu. (undivided).

It is agreed between the parties that the storage capacity of the above facilities is 522,500 bushels.

Adjacent to the above-described grain elevator is a "flat house" building of wood construction which has also been used for grain and other storage.

All of said facilities are located on the 0.75 acres described in the Complaint and owned by the defendant Almota Elevator and Warehouse Company and are subject to the leasehold interest of said defendant.

10. It is agreed by and between the parties hereto that the highest and best use of said facilities at the date of taking was that of a grain and pea storage and handling facility.

11. This proceeding involves the taking of the entire interest of the defendant, Almota Farmers Elevator and Warehouse Company in Parcel "A", and there are no severance damages.

12. The lands designated in the Complaint and Declaration of Taking as Parcel "A" are as described in Schedule A attached to said

Declaration of Taking, and the lands are as shown on the map designated as Schedule B, Segment 6, attached to said Declaration of Taking.

PLAINTIFF'S CONTENTIONS

The plaintiff's contentions are as follows:

1. The just compensation to be paid by the United States for the acquisition of Parcel "A" and the improvements situated thereon as of May 26, 1967 is the interest set forth in that certain lease by and between Almota Farmers Elevator and Warehouse Company and the Oregon-Washington Railroad and Navigation Company, without consideration of the possibility of renewal of the lease after its expiration on October 12, 1974;

2. Should the Court at time of trial permit the presentation of evidence based on the possibility of a renewal of the lease beyond its expiration date of October 12, 1974, the jury be instructed to return special verdicts as provided in Rule 49(a), Federal Rules of Civil Procedure, as follows:

> (a) A special verdict finding the amount of just compensation to be paid for Parcel "A" for the taking of defendant's leasehold interest therein consisting of a remaining term of

approximately seven and one-half years and without consideration of the possibility of a renewal of said lease;

(b) A special verdict finding the amount of just compensation to be paid for Parcel "A" for the taking of defendant's leasehold interest therein based upon the premise of the possibility of a renewal of the defendant's lease following the expiration of the seven and one-half years remaining of its term at the date of taking.

DEFENDANT'S CONTENTIONS

The contentions of the defendants are as follows:

1. At the time of the taking of defendant's leasehold and building improvements, defendant was the owner of three connected crib elevator buildings and a concrete storage tank of a total capacity of 522,500 bushels of bulk grain complete with all necessary machinery for the receiving of grain by truck and the loading out of the same by rail or truck, including two legs, a receiving pit and platform scale, a truck hoist, an elevator office and an automatic loading out scale, together with a storage flat house having a licensed capacity of 63,900 bushels, plus storage space of about 980 square feet.

2. That included as a part of the benefits, elements and appurtenances affecting the market value of said leasehold

and improvements was the location of said improvements immediately adjacent to a county roadway on the south side thereof and the use and access for rail shipments without any charge or cost of maintenance thereof of a railroad siding immediately to the north of said improvement sufficient in length to enable six grain cars to be spotted and loaded daily without any switching by the defendant, together with utilities consisting of electricity, telephone and water.

3. That the defendant has owned and operated elevator and warehouse facilities upon land leased from the railroad at Almota since 1919; that on and since said time numerous leases have been made and entered into, all of which, except for the lease in force and effect on May 26, 1967, were not to exceed five year leases; that each of said leases was automatically renewed upon each expiration dates; that the defendant at all times has been assured by the railroad that renewals thereof would continue so long as defendant continued to comply with the terms and provisions of each respective lease and continued to ship substantially all of its grain by rail,

and the officers of defendant have had every reason to believe the railroad would continue to grant the company lease renewals indefinitely into the future; that the policy of the railroad in question is to encourage and promote leasehold improvements upon its lands and to continue to renew all such leases so long as rail freight traffic is produced thereby for the railroad; that no such lease in the absence of a violation of the terms and provisions thereof is ever terminated or a renewal refused; and that that policy had been and was applied at Almota at the time of the taking on May 26, 1967.

4. The defendant is entitled to be compensated for the full market value of its leasehold and building improvements thereon as of the date of taking the same, the total value of said leasehold and improvements to be what the interest of said company therein could have been sold for upon the open market considering all elements and possibilities whatsoever found to then affect the market value of those interests, including, but not exclusive of, the possibilities of renewal of the lease.

5. That as a fact the market value of a railroad leasehold and elevator improvements and related appurtenances and elements of value where the lessee ships substantial-

ly all grain by rail is the full market value of a fee interest therein less only the market value of the unimproved leased land.

ISSUES OF FACT AND LAW

The issue of fact in this case is the amount of just compensation to be paid by the United States of America for the taking of Parcel "A".

The issue of law to be determined in this proceeding concerns the admissibility of evidence on the issues of just compensation at the time of trial.

EXHIBITS

It is agreed by the parties that on or before five (5) days prior to the date of trial, the parties will submit to the Clerk of Court for marking all available exhibits intended to be introduced at the time of trial. Exhibits not available at said time may be submitted later with the permission of the Court.

JURY

It is agreed that there will be a jury view of the premises involved. It is further agreed that no alternate juror will be chosen, and that in the event any one

juror becomes disqualified or is excused by the court, that the remaining eleven jurors may reach a verdict. It is further agreed that the jury verdict need not be unanimous, but that a verdict may be returned by an agreement of ten of the jurors.

EXPERT WITNESSES

1. The plaintiff may call not to exceed three expert witnesses on the issue of just compensation.

2. The defendants may call not to exceed three expert witnesses on the issue of just compensation.

TRIAL

The plaintiff shall have the right to open and close.

ACTION BY THE COURT

The Court has ruled that:

1. The issue of just compensation will be tried to a jury.

2. The defendant is entitled to be compensated for the full market value of its leasehold and building improvements thereon as of the date of taking the same, the total value of said leasehold and improvements with appurtenances and other elements of value to be what the interests of said company therein could have been then sold for upon the open

market considering all elements and possibilities whatsoever found to then affect the market value of those interests including, but not exclusive of, the possibilities of renewal of the lease and of the landlord requiring the removal of the improvements in the event of there being no lease renewal.

3. On or before March 12, 1969, the parties will exchange lists of comparable sales which have been investigated by the parties and may be used at the time of trial, with a copy of such list to be filed with the Court. The list shall include the location of the lands; date of sale; the names of buyer and seller; and the consideration for each sale. Each party is limited to a maximum of 12 comparable sales. The listing of any sale shall not constitute an admission by the listing party that such sale is in fact comparable.

IT IS HEREBY ORDERED that the foregoing constitutes the pre-trial order in the above-entitled action as to Parcel "A", and that it supplements the pleadings herein, and that it shall not be amended except by the consent of the parties or by order of the Court to prevent manifest injustice.

DATED this 6 day of March, 1969.

/s/ Charles L. Powell
United States District Judge

The foregoing form of pretrial order is hereby approved:

/s/ John H. McRae
JOHN H. McRAE
Assistant United States Attorney
Attorney for Plaintiff

/s/ Lawrence Hickman
LAWRENCE HICKMAN
Attorney for Almota Farmers Elevator and Warehouse Co.

STIPULATION AS TO PARCEL "A"
(Title omitted in printing)

[Filed in the U.S. District Court, Eastern District of Washington, Mar. 21, 1969, Dorothy E. Moulton, Clerk, L.R. Deputy

Comes now the plaintiff United States of America, by and through John H. McRae, Assistant United States Attorney, and the defendant Almota Farmers Elevator and Warehouse Company, a corporation, by Lawrence Hickman, Attorney at Law, and in connection with Parcel "A" of the above-captioned proceeding stipulate and agree to the following facts and procedures:

1. This is a civil action commenced by the plaintiff United States of America to acquire title to a certain interest in land designated in this proceeding as Parcel "A", which interest was required for public use by the United States in connection with the construction of the Little Goose Lock & Dam Project of the Corps of Army Engineers on the Snake River in Whitman County, Washington.

2. Parcel "A" is a parcel of land containing 0.75 of an acre lying within the existing right-of-way of the Oregon-Washington Railroad and Navigation Company in Whitman County, Washington, and said land is more particularly described

in Exhibit No. 1 attached to this Stipulation and by this reference made a part hereof.

3. The estate acquired in this proceeding to Parcel "A" is all right, title and interest of the defendant Almota Farmers Elevator and Warehouse Company in and to the land described on attached Exhibit No. 1, subject, however, to existing easements for public roads and highway, public utilities, railroads and pipelines, if any.

4. On May 26, 1967, the United States of America filed a Declaration of Taking in this proceeding and deposited the sum of $108,500.00 as estimated just compensation as to Parcel "A", and thereupon the estate set forth in Paragraph 3 of this stipulation vested in the United States of America. It is agreed that May 26, 1967 is the date of taking in this proceeding as to Parcel "A".

5. On May 26, 1967, the date of taking herein, the interest of the defendant Almota Farmers Elevator and Warehouse Company in the land designated as Parcel "A" was a leasehold interest in said land and the structures and improvements situated thereon, as said interest is set

forth in that certain agreement dated March 2, 1955 by and between the Oregon-Washington Railroad and Navigation Company as lessor and the defendant Almota Farmers Elevator and Warehouse Company as lessee. Copies of said leasehold agreement, with amendments, supplements and modifications thereto, are attached to this Stipulation as Exhibit No. 2, and it is hereby agreed that such copies may be admitted in evidence for all pertinent purposes, including the purpose of setting forth the leasehold rights of the defendant Almota Farmers Elevator and Warehouse Company in and to the land designated as Parcel "A".

6. The interest of the defendant Almota Farmers Elevator and Warehouse Company in the land described as Parcel "A" and to the improvements situated thereon is the interest set forth in that certain lease by and between defendant, as lessee, and the Oregon-Washington Railroad and Navigation Company, as lessor, copy of which is identified as plaintiff's Exhibit No. 2 and which provides in pertinent part as follows:

a. The lease term is a period of twenty years commencing October 13, 1954, and expiring October 12, 1974;

b. The property is leased for the purpose of receipt, shipping, storage and

handling of grain;

c. The lessee may remove its buildings and improvements at the expiration of the lease, but if the lessee does not do so, they are to become the property of the lessor, who may remove them at lessee's expense.

d. The lease contains no option for renewal.

7. It is stipulated and agreed that there is evidence available to the effect that as of May 26, 1967, the date of taking herein, and for some years prior thereto, the railroad company, as the owner of the fee simple title to lands subject to leasehold interest for grain elevators, was extending the terms of existing leaseholds or granting new leaseholds to former lessees upon the expiration of existing terms on the same or similar terms as the expired leaseholds, that it was generally accepted by lessees of the railroad that such renewals of the leasehold interest could be expected, and that railroads generally have not cancelled or refused to renew elevator or warehouse leases so long as the lessee remains in business and is producing freight traffic for the railroad. It is further stipulated and agreed that there is evidence available to the effect that buyers

of leasehold interests in railroad land were paying more for the unexpired term of the leasehold interest sold than the value of the bare legal rights possessed by the lessees under such leasehold agreements.

8. The plaintiff United States of America has contended that any evidence relating to the custom or practice in the community or the policy or practice of the parties relating to the extension of this or similar leases is not pertinent, material or competent, and that the just compensation to be paid for the taking of the defendant's leasehold interest, including building improvements, in Parcel "A" should be based upon the fair market value of the legal rights possessed by the defendant by virtue of the lease as of the date of taking, and that no consideration should be given to any additional value which might have been obtained upon the open market based upon a supposition or expectation that an extension of the defendant's leasehold interest could have been obtained from the lessor at a favorable rental.

9. The defendant Almota Farmers Elevator and Warehouse Company has contended

that the just compensation to be paid for the taking of its leasehold interest in Parcel "A" should be based upon what a willing buyer and a willing seller would have agreed upon as the fair market value for the unexpired term of the leasehold interest on the open market as of the date of taking, with consideration being given to the probability or possibility that the leasehold interest would be extended beyond the termination date set forth in the lease agreement, as it may affect market value.

10. The Court has made the following ruling at pretrial: ". . . the defendant, Almota Farmers Elevator and Warehouse Company, Incorporated, is held to be entitled to be compensated for the full market value of its leasehold "and building improvements thereon as of the date of taking the same, the total value of said leasehold and improvements to be what the interests of said company therein could have been then sold for upon the open market considering all the elements and possibilities whatsoever found to then affect the market value of those interests including but not exclusive of the possibilities of renewal of the lease and of the landlord requiring the removal of the improvements in the event of

there being no lease renewal."

11. It is further stipulated and agreed by and between the parties hereto that the buildings, structures and improvements, including installed grain handling equipment and machinery, comprising a part of the realty are no longer required by the plaintiff and that the right to remove said buildings, structures and improvements, including installed grain handling equipment and machinery, may be and hereby is excluded from the proceeding, and right to remove the improvements as aforesaid will be revested in the former owner, PROVIDED that the removal of such buildings, structures and improvements, including installed grain handling equipment and machinery be effectuated by the defendant on or before September 30, 1969, and PROVIDED FURTHER that in the event such equipment, machinery and improvements are not removed by the defendant on or before September 30, 1969, or such further date as may be agreed upon by the plaintiff and defendant, then the right of removal shall terminate automatically, and the United States of America shall have a good and indefeasible title to such equipment, machinery and improvements as remain without notice to the defendant.

12. It is stipulated and agreed that in the event that it is finally determined that the just compensation to be paid to the defendant Almota Farmers Elevator and Warehouse Company for the taking of Parcel "A" should be arrived at in accordance with the contentions of the plaintiff, as set forth in Paragraph 8 of this stipulation, THEN, in that event, the fair market value of the interest of the defendant Almota Farmers Elevator and Warehouse Company in the land and improvements designated as Parcel "A" as of May 26, 1967, and the amount of just compensation payable to the defendant for the taking of the estate condemned is the sum of $130,000.00, together with interest as hereinafter provided.

13. On the other hand, it is stipulated and agreed that in the event that it is finally determined that the just compensation to be paid to the defendant Almota Farmers Elevator and Warehouse Company for the taking of Parcel "A" should be arrived at in accordance with the contentions of the defendant, as set forth in Paragraphs 9 and 10 of this stipulation, THEN in that event, the fair market value of the interest of the defendant Almota Farmers Elevator and Warehouse Company

in the land and improvements designated as Parcel "A" as of May 26, 1967, and the amount of just compensation payable to the defendant for the taking of the estate condemned is the sum of $274,625.00, together with interest as hereinafter provided.

14. It is stipulated and agreed by and between the parties hereto that the following procedure may be utilized, subject to the approval of the Court, in the trial of this case and in the entry of judgment:

a. The case may proceed to trial before the Court sitting without a jury on the basis of the facts herein stipulated and upon the basis of the admitted facts as set forth in the Pre-Trial Order entered herein on March 6, 1969, namely, Paragraphs 1 through 12 of the Admitted Facts as set forth on pages 2 and 3, and 4 of said Order, and on lines 1 through 12 of page 5 of said Order.

b. Neither party admits to the relevancy, materiality or competency of any or all of such facts, although the truth of such facts may be admitted as hereinabove stipulated.

c. If the Court should determine at said trial that the just compensation to be paid to the defendant Almota Farmers Elevator and Warehouse Company for the taking of Parcel "A" should be arrived at in accordance with the contentions of the plaintiff, as set forth in Paragraph 8 of this stipulation, THEN the Court may enter a judgment determining the just compensation to be paid to the defendant to be the amount of $130,000.00, and it is further stipulated and agreed that in such event the Court should provide that the difference between such amount and the amount paid into the registry of the Court as estimated just compensation shall draw interest at the rate of six per cent (6%) per annum from the date of entry of such judgment until the amount of such deficiency has been paid into the registry of the Court, and further providing that no interest is payable by the United States on such deficiency for any period prior to the date of entry of such judgment.

d. On the other hand, if the Court should determine at said trial that the just compensation to be paid to the

defendant Almota Farmers Elevator and Warehouse Company for the taking of Parcel "A" should be arrived at in accordance with the contentions of the defendant as set forth in paragraphs 9 and 10 of this stipulation, THEN the Court may enter a judgment determining the just compensation to be paid to the defendant to be the sum of $274,625.00, and it is further stipulated and agreed that in such event the Court should provide that the difference between such amount and the amount paid into the registry of the Court as estimated just compensation shall draw interest at the rate of six per cent (6%) per annum from the date of entry of such judgment until the amount of such deficiency has been paid into the registry of the Court, and further providing that no interest is payable by the United States on such deficiency for any period prior to the date of entry of judgment.

e. The parties hereto reserve all exceptions to the Court's rulings and all rights to an appeal from the judgment of the Court, and in the event of reversal or remand, the terms of this stipulation shall be applicable as herein

set forth, including the amount of just compensation payable by the United States of America to the defendant Almota Farmers Elevator and Warehouse Company, and such terms shall prevail in the re-trial of this action or such other further hearings as the Appellate Court may require in accordance with the mandate of such Court.

15. It is further stipulated and agreed by and between the parties hereto that at the time judgment determining just compensation in this proceeding as to Parcel "A" is entered pursuant to this stipulation, whether such judgment be in the amount of $130,000.00 or in the amount of $274,625.00 as hereinbefore provided, then in either event, the plaintiff and the defendant shall file a stipulation that the terms of that certain order entered August 14, 1968, Amending Order of Possession as to Parcel "A", shall be amended so as to provide that the defendant may retain possession of the premises designated as Parcel "A" for the period March 1, 1969 to September 1, 1969 without the requirement of the payment of rent for such occupancy to the plaintiff, and further providing that the possession of the defendant of

said premises be extended to the date of September 30, 1969, also without the payment of rent, and further providing that in the event construction schedules permit and it is agreed by officials of the Corps of Army Engineers that the possession of the defendant of the premises may be extended to November 1, 1969, then in such event that the further extension of possession to November 1, 1969 shall also be without the requirement of the payment of rent on the part of the defendant.

DATED this 20 day of March, 1969.

/s/ John H. McRae
JOHN H. McRAE
Assistant United States Attorney

/s/ Lawrence Hickman
LAWRENCE HICKMAN
Of Attorneys for Defendant
Almota Farmers Elevator & Warehouse Co.

EXHIBIT "1"

(Legal description of Parcel "A" omitted in printing. See Page 58, Volume I, transcript of record.)

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF WASHINGTON

NORTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. 22.95 ACRES OF LAND, etc.; ALMOTA FARMERS ELEVATOR AND WAREHOUSE COMPANY: et al, Defendants.	CIVIL NO. 3021 FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO PARCEL "A"

[Filed in the U.S. District Court, Eastern District of Washington, Apr. 9, 1969, Dorothy E. Moulton, Clerk, L.R. Deputy]

THIS MATTER came on regularly for trial on the issue of just compensation before this Court, sitting without a jury, at Spokane, Washington, on March 21, 1969.

The plaintiff United States of America appeared by John H. McRae and Robert M. Sweeney Assistant United States attorneys, and the defendant Almota Farmers Elevator and Warehouse Company, a corporation, appeared by Lawrence Hickman, its attorney of record.

By stipulation executed by the plaintiff and defendant as to Parcel A entered in this proceeding on March 21, 1969, the parties agreed to the facts necessary for the determination of the just compensation to be paid as to Parcel "A" and said parties further agreed to

the procedure to be followed in this proceeding as to the trial of the issue of just compensation as to Parcel A.

Trial by jury having been waived, and the Court having considered the pleadings on file herein, the facts agreed upon by the parties as set forth in the pre-trial order entered March 6, 1969 and in the stipulation of the parties filed March 21, 1969, and the Court otherwise being fully advised in the premises now makes the following:

FINDINGS OF FACT

1. This is a civil action commenced by the plaintiff United States of America under power of eminent domain to acquire title to the lands and interest designated as Parcel A and to provide for the ascertainment and award of just compensation to the owners and parties in interest.

2. The authority for the taking is the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. 258a), and acts supplementary thereto and amendatory thereof, and under the further authority of the Act of Congress approved April 24, 1888 (25 Stat. 94, 33 U.S.C. 591), which act authorizes the acquisition of land for river and harbor purposes; the Act of Congress approved

March 2, 1945 (Public Law 14, 79th Congress), which act authorizes the construction of Little Goose Lock and Dam; and the Act of Congress approved October 15, 1966 (Public Law 89-689), which act appropriated funds for such purposes.

3. The public uses for which said land is taken are as follows: The said land is necessary to adequately provide for the construction of a river improvement for the purposes of navigation, and for other uses incident thereto. The said land has been selected by the Secretary of the Army for acquisition by the United States for use in connection with Little Goose Lock and Dam and for such other uses as may be authorized by Congress or by Executive Order.

4. The estate acquired in this proceeding as to Parcel A is all right, title and interest of the defendant Almota Farmers Elevator and Warehouse Company in and to the lands designated as Parcel A and described on Exhibit A attached hereto, subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

5. The lands designated as Parcel A which are the subject matter of this proceeding are as described in Exhibit A attached hereto and made a part hereof.

6. The plaintiff United States of America acquired the estate set forth in Paragraph 4 of these Findings of Fact on May 26, 1967, when it filed in this proceeding a Declaration of Taking as to Parcel A and simultaneously deposited into the registry of the court the sum of $108,500.00 as estimated just compensation for the taking of said Parcel A.

7. The defendant Almota Farmers Elevator and Warehouse Company is a corporation organized and existing under the laws of the State of Washington.

8. On May 26, 1967, the date of taking herein, the defendant Whitman County, Washington, a municipal corporation, had an interest in the lands designated as Parcel A by reason of taxes and assessments due and exigible as of said date of taking, which taxes have heretofore been paid and satisfied and defendant Whitman County, Washington, a municipal corporation, has no further interest in the just compensation to be paid as to Parcel A.

9. The parcel of land designated as Parcel "A" consists of 0.75 of an acre located at Almota, in Whitman County, Washington. The fee title to said lands immediately prior to the filing of the Dec-

laration of Taking was in the Oregon & Washington Railroad and Navigation Company, and the defendant, Almota Farmers Elevator and Warehouse Company, held a leasehold interest in the said lands and in the improvements situated thereon.

10. On May 26, 1967, the date of taking herein, the leasehold interest of the defendant Almota Farmers Elevator and Warehouse Company in the land designated as Parcel A and the structures and improvements situated thereon was as set forth in that certain agreement dated March 2, 1955 by and between the Oregon-Washington Railroad and Navigation Company, as lessor, and the defendant Almota Farmers Elevator and Warehouse Company, as lessee.

11. The interest of the defendant Almota Farmers Elevator and Warehouse Company in the land described as Parcel "A" and to the improvements situated thereon is the interest set forth in that certain lease by and between defendant, as lessee, and the Oregon-Washington Railroad and Navigation Company, as lessor, and which provides in pertinent part as follows:

a. The lease term is a period of twenty years commencing October 13, 1954, and expiring October 12, 1974;

b. The property is leased for the purpose of receipt, shipping, storage and handling of grain;

c. The lessee may remove its buildings and improvements at the expiration of the lease, but if the lessee does not do so, they are to become the property of the lessor, who may remove them at leslee's expense.

d. The lease contains no option for renewal.

12. On the date of taking, the improvements on Parcel "a" consisted of a grain elevator, including machinery and equipment for the storage and handling of grain. Among the facilities were the following:

(a) Head house elevator of wood crib construction with a capacity of 126,485 bu. divided into 18 bins;

(b) East Annex elevator of wood crib construction with a capacity of 125,290 bu. divided into 12 bins;

(c) West Annex elevator of wood crib construction with a capacity of 122,265 bu. divided into 12 bins;

(d) Concrete tank elevator with a capacity of 148,460 bu. (undivided).

The storage capacity of the above facilities is 522,500 bushels. The highest and best use of said facility at the date of taking was that of a grain and pea storage

and handling facility.

Adjacent to the above-described grain elevator is a "flat house" building of wood construction which has also been used for grain and other storage.

All of said facilities are located on the 0.75 acres described in the Complaint and owned by the defendant Almota Farmers Elevator and Warehouse Company and are subject to the leasehold interest of said defendant.

13. There is evidence available to the effect that as of May 26, 1967, the date of taking herein, and for some years prior thereto, the railroad company, as the owner of the fee simple title to lands subject to leasehold interest for grain elevators, was extending the terms of existing leaseholds or granting new leaseholds to former lessees upon the expiration of existing terms on the same or similar terms as the expired leaseholds, that it was generally accepted by lessees of the railroad that such renewals of the leasehold interest could be expected, and that railroads generally have not cancelled or refused to renew elevator or warehouse leases so long as the lessee remains in business and is producing freight traffic for the railroad. There is evidence available to the effect

that buyers of leasehold interests in railroad land were paying more for the unexpired term of the leasehold interest sold than the value of the bare legal rights possessed by the lessees under such leasehold agreements.

14. The plaintiff United States of America has contended that any evidence relating to the custom or practice in the community or the policy or practice of the parties relating to the extension of this or similar leases is not pertinent, material or competent, and that the just compensation to be paid for the taking of the defendant's leasehold interest, including building improvements, in Parcel "A" should be based upon the fair market value of the legal rights possessed by the defendant by virtue of the lease as of the date of taking, and that no consideration should be given to any additional value which might have been obtained upon the open market based upon a supposition or expectation that an extension of the defendant's leasehold interest could have been obtained from the lessor at a favorable rental.

The fair market value of the interest of the defendant Almota Farmers Elevator and Warehouse Company in the land and im-

provements designated as Parcel A as of May 26, 1967, and the amount of just compensation payable to the defendant for the taking of the estate condemned as based upon the contention of the plaintiff United States of America as set forth in this paragraph of the Findings of Fact is the sum of $130,000.00, together with interest as provided in the stipulation of the parties filed herein on March 21, 1967.

15. The defendant Almota Farmers Elevator and Warehouse Company has contended that the just compensation to be paid for the taking of its leasehold interest in Parcel "A" should be based upon what a willing buyer and a willing seller would have agreed upon as the fair market value for the unexpired term of the leasehold interest on the open market as of the date of taking, with consideration being given to the probability or possibility that the leasehold interest would be extended beyond the termination date set forth in the lease agreement.

The defendant further contends that just compensation to be paid for the taking of its leasehold interest in Parcel A should be based upon the pre-trial ruling of this Court as follows: ". . . the defendant, Almota Farmers Elevator and Warehouse Company,

Incorporated, is held to be entitled to be compensated for the full market value of its leasehold and building improvements thereon as of the date of taking the same, the total value of said leasehold and improvements to be what the interests of said company therein could have been then sold for upon the open market considering all the elements and possibilities whatsoever found to then affect the market value of those interests including but not exclusive of the possibilities of renewal of the lease and of the landlord requiring the removal of the improvements in the event of there being no lease renewal."

The fair market value of the interest of the defendant Almota Farmers Elevator and Warehouse Company in the land and improvements designated as Parcel A as of May 26, 1967 and the amount of just compensation payable to the defendant for the taking of the estate condemned as based upon the contentions of the defendant as set forth in this paragraph of these Findings of Fact is the sum of $274,625.00, together with interest as provided in the stipulation of the parties filed herein on March 21, 1969.

16. The Court finds that the fair market value of the interest of Almota Farmers Elevator and Warehouse Company as of May 26,

1967, and the just compensation payable to said defendant is the amount of $274,625.00, together with interest as provided in the stipulation of the parties filed herein on March 21, 1969, which finding is based upon the contention of the defendant as set forth in paragraph 15 of these admitted facts and upon a consideration of the facts set forth in paragraph 13 of these Findings of Fact.

17. At the time of the filing of the Declaration of Taking herein the plaintiff deposited into the registry of the Court as estimated just compensation as to Parcel A the sum of $108,500.00. From the amount deposited as estimated just compensation as to Parcel A as aforesaid, there has been disbursed from the registry of the Court pursuant to the order for advance compensation filed herein on August 14, 1967, the sum of $107,000.00, which advance compensation was paid $105,000.00 and $168.70 to the Almota Farmers Elevator and Warehouse Company and the sum of $1,831.30 to the defendant Whitman County, Washington. The balance of the sum deposited as estimated just compensation as to Parcel A in the amount of $1,500.00 remains on deposit in the registry of this Court.

18. It has been stipulated and agreed

by and between the parties hereto that the buildings, structures and improvements, including installed grain handling equipment and machinery, comprising a part of the realty are no longer required by the plaintiff and that the right to remove said buildings, structures and improvements, including installed grain handling equipment and machinery,may be and hereby is excluded from the proceeding, and right to remove the improvements as aforesaid will be revested in the former owner, PROVIDED, that the removal of such buildings, structures and improvements, including installed grain handling equipment and machinery be effectuated by the defendant on or before September 30, 1969, and PROVIDED FURTHER that in the event such equipment, machinery and improvements are not removed by the defendant on or before September 30, 1969, or such further date as may be agreed upon by the plaintiff and defendant, then the right of removal shall terminate automatically, and the United States of America shall have a good and indefeasible title to such equipment, machinery and improvements as remain without notice to the defendant.

From the foregoing Findings of Fact, the Court now makes the following:

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the subject matter and the parties in this proceeding as to Parcel A.

2. United States of America had the right under the authorities set forth in the complaint filed herein to condemn for public use the lands and interests therein designated as Parcel A.

3. The Court concludes that the defendant Almota Farmers Elevator and Warehouse Company is entitled to be compensated for the full market value of its leasehold and building improvements thereon as of the date of taking the same, the total value of said leasehold and improvements to be what the interests of said company therein could have been then sold for upon the open market considering all the elements and possibilities whatsoever found to then affect the market value of those interests including but not exclusive of the possibilities of renewal of the lease and of the landlord requiring the removal of the improvements in the event of there being no lease renewal.

4. The Court further concludes that the determination of the fair market value of the leasehold interest of the defendant Almota Farmers Elevator and Warehouse Company in the

land and improvements designated as Parcel A, and the just compensation to be paid for the taking thereof in this proceeding, should not be limited by the bare legal rights possessed by said defendant by virtue of the lease existing as of the date of taking, but said just compensation should be based upon what a willing buyer and a willing seller would have agreed upon as the fair market value for the unexpired term of the leasehold interest on the open market as of the date of taking, consideration being given to the probability or possibility that the leasehold interest would be extended beyond the termination date set forth in the lease agreement, as it may affect the market value.

5. In consideration of the above and upon consideration of the evidence set forth in paragraph 13 of these Findings of Fact, the total sum of $274,625.00 as set forth in the Findings of Fact herein represents the fair market value of the lands and interest designated as Parcel A and said sum is the full, true and reasonable amount of all compensation to be allowed to all persons whomsoever for all damages of whatsoever nature sustained by reason of the taking of the land and interest designated

as Parcel A, and that payment of said sum to the parties entitled thereto shall constitute full settlement of all claims against the United States of America arising out of said taking.

6. The sum of $108,500.00 deposited as estimated just compensation as to Parcel A should be applied upon the aforesaid total amount of just compensation in the sum of $274,625.00, and there should be a deficiency judgment against the plaintiff, United States of America, in the sum of $166,125.00, with interest thereon at the rate of six per cent per annum from the date of entry of judgment as to Parcel A until paid into the registry of the Court.

7. The judgment to be entered in this proceeding as to Parcel A should provide for the right of removal in the defendant of the buildings, structures and improvements, including grain handling equipment and machinery, in the manner set forth in paragraph 11 of these Findings of Fact.

8. All right, title and interest of the Almota Farmers Elevator and Warehouse Company in and to the land designated as Parcel "A" attached hereto vested in the United States of America on May 26, 1967, subject, however, to existing easements for

public roads and highways, public utilities, railroads and pipelines, and free and clear of all charges, interests, claims, taxes, liens and encumbrances whatsoever.

DATED this 1st day of ~~March~~ April, 1969.

/s/ Charles L. Powell
United States District Judge

Copy Received:

/s/ John H. McRae
JOHN H. McRae
Assistant United States Attorney

Presented by:

/s/ Lawrence Hickman
Lawrence Hickman
Attorney for Defendant

EXHIBIT "A"

(legal description of Parcel "A" omitted in printing. See Page 79, Volume I, transcript of record.)

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs.	)	Civil Action No. 3021
22.95 ACRES OF LAND, more or less, situate in Whitman County, State of Washington; ALMOTA FARMERS ELEVATOR AND WAREHOUSE COMPANY, a Washington corporation, et al., Defendants.	)	JUDGMENT AND DEFICIENCY AS TO PARCEL "A"

[Filed in the U.S. District Court, Eastern District of Washington Apr. 9, 1969, Dorothy E. Moulton, Clerk, LR Deputy]

This matter came on regularly for trial before the Court sitting without a jury at Spokane, Washington, on March 21, 1969. The plaintiff United States of America appeared by John H. McRae and Robert M. Sweeney, Assistant United States Attorneys, and the defendant Almota Farmers Elevator and Warehouse Company, a Washington corporation, appeared by Lawrence Hickman, its attorney of record.

The Court having considered the records on file herein, including the pre-trial Order entered on March 6, 1969 and the stipulation of the parties filed on March 21, 1969, and having on ~~March~~ April DEM 9, 1969 entered Findings of Fact and Conclusions of Law on the issue of the amount of just com-

pensation to be paid for the taking of the land and interest designated as Parcel "A", and the Court having jurisdiction of the parties and of the subject matter of this proceeding, now, therefore

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The plaintiff United States of America had the right under the authority set forth in the complaint herein to condemn for public use the land and interest designated as Parcel "A" and as described in Exhibit "A" attached hereto.

2. The amount of just compensation in the total amount of $274,625.00 as set forth in the Findings of Fact and Conclusions of Law on file herein represents the fair market value of the land and interest designated as Parcel "A" acquired by the plaintiff in this proceeding and the full, true, and reasonable amount of all compensation to be allowed to all persons whomsoever for all damages of whatsoever nature sustained by reason of the taking thereof, and that payment as hereinafter provided shall constitute full settlement of all claims against the United States of America arising out of said taking.

3. The sum of $107,000.00 heretofore pa

as advance compensation pursuant to the Order of this Court entered on August 14, 1967 is hereby applied upon the aforesaid total amount of just compensation. The following is the only person or party having any interest in the compensation to be paid for the taking of Parcel "A", and the Clerk of Court is directed to disburse the balance of the moneys now on deposit in the registry of the Court as to Parcel "A" as follows:

TO: Almota Farmers Elevator and Warehouse Company
c/o Lawrence Hickman
Attorney at Law
E. 116 Spring Street
Colfax, Washington 99111 $1,500.00

4. That a deficiency judgment be and the same is hereby entered against the plaintiff United States of America and in favor of the defendant Almota Farmers Elevator and Warehouse Company in the sum of $166,125.00, with interest thereon at the rate of six per cent per annum from the date of entry of this judgment, namely, ~~March~~ April 9 DEM, 1969, until the amount of the said deficiency is paid into the registry of the Court, and the payment by the plaintiff of said deficiency into the registry of the Court shall constitute full satisfaction of said deficiency judgment. Upon payment of such deficiency judgment into the registry of the Court, the Clerk of Court

is hereby authorized and directed forthwith and without further order of the Court to pay said sum to the defendant Almota Farmers Elevator and Warehouse Company, in care of its aforesaid attorney, in full satisfaction of such deficiency judgment.

5. The defendant Almota Farmers Elevator and Warehouse Company may remove the buildings, structures and improvements, including installed grain handling equipment and machinery which were located on the land designated as Parcel "A" as of the date of taking, provided that the removal of such buildings, structures, and improvements, including installed grain handling equipment and machinery, be effectuated by the defendant on or before September 30, 1969, and that upon removal by the defendant of such buildings, structures, and improvements, including grain handling equipment and machinery, the title thereto shall revest in said defendant, and provided further that in the event such equipment, machinery and improvements are not removed by the defendant on or before September 30, 1969, or such further date as may be agreed upon by the plaintiff and defendant, then the right of removal shall terminate automatically and the United States of America shall have a

good and indefeasible title to such equipment, machinery and improvements as remain without notice to the defendant.

6. All right, title and interest of the Almota Farmers Elevator and Warehouse Company in and to the land designated as Parcel "A" attached hereto vested in the United States of America on May 26, 1967, subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines, and free and clear of all charges, interests, claims, taxes, liens and encumbrances whatsoever.

DATED this 1st day of ~~March~~ April, 1969.

/s/ Charles L. Powell
United States District Judge

Entered in Civil Docket on
4/9/69
LR

Copy Received:

/s/ John H. McRae
John H. McRae
Assistant United States Attorney
of Attorneys for Plaintiff

Presented by:

/s/ Lawrence Hickman
Lawrence Hickman
Attorney for defendant

(Ex. "A" omitted in printing)
[Tr. Vol. 1, p. 84]

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF WASHINGTON

NORTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. 22.95 ACRES OF LAND, more or less, situate in Whitman County, State of Washington; ALMOTA FARMERS ELEVATOR AND WAREHOUSE COMPANY, a Washington corporation, et al., Defendants.	Civil Action No. 3021 NOTICE OF APPEAL AS TO PARCEL "A"

[Filed in the U.S.District Court, Eastern District of Washington, May 29, 1969, Dorothy E. Moulton, Clerk, LR Deputy]

NOTICE IS HEREBY GIVEN that the plaintiff United States of America by its attorneys of record does hereby appeal to the Court of Appeals for the Ninth Circuit from that judgment dated April 1, 1969 and entered in the above-entitled Court on April 9, 1969, and from that Order Denying Motion for Amendment of Findings of Fact and Conclusions of Law and Judgment as to Parcel "A" entered on May 20, 1969.

DATED this 29 day of May, 1969.

DEAN C. SMITH
United States Attorney

/s/ John H. McRae
John H. McRae, Assistant U.S. Attorney

/s/ ROBERT M. SWEENEY
Assistant United States Attorney
Attorneys for Plaintiff

SUPREME COURT OF THE UNITED STATES

No. 71-951

ALMOTA FARMERS ELEVATOR AND WAREHOUSE COMPANY,

Petitioner,

v.

UNITED STATES

ORDER ALLOWING CERTIORARI. Filed ---------
April 3, 1972

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth ---------- Circuit is granted, and set for oral argument with No. 71-559.